

State of Maine
Bureau of General Services
Division of Purchases
Contract for Ultra Low Sulfur Diesel Fuel Oil

Contract Issued by:

State of Maine
Department of Administrative and Financial Services
Bureau of General Services
Division of Purchases
9 State House Station
Augusta, ME 04333-0077
Tel: (207) 624-7352
Fax: (207) 287-4039
Contact Person: Alan Henry
E-mail: alan.henry@maine.gov

Accepting for the State of Maine

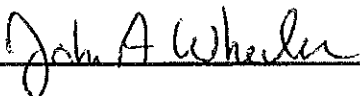

Donald McCorrack, Director, BGS

Date: 6-26-12

Contractor Information:

John Wheeler
CN Brown
P.O. Box 200
S. Paris, ME 04281
207-743-9212
info@cnbrown.com
VS0000000154

Accepting for Contractor


John A. Wheeler

Date: 6-20-2012

Award Term:

Start Date: October 1, 2012. **End Date:** September 30, 2013

NOTE: This Award may be extended for up to an additional two years with the mutual agreement of the parties as per the terms and conditions set forth per RFQ 18P 10102600000000000439. The State may contract to purchase next years (2013-2014) fuel at any time during the contract period, if pricing is advantageous to the State of Maine

Description of Commodity and/or Service

Product to be Delivered Specified in Fuel Oil Region List, Attachment A

Futures price of #2 heating oil at time of purchase	\$	2.8767	per gallon
Fixed Adder price as quoted in RFQ	\$	0.1426	per gallon

Total delivered cost per gallon as shown on invoice upon delivery \$ 3.0193 per gallon

Total Amount of gallons purchased for this region and contract period 425000
(Four Hundred and Twenty Five Thousand Gallons)

This agreement is for a Fixed Adder price contract. The Fixed Adder will be added to the New York market price and adjusted by the yearly weighted average for the heating season curve for future market pricing.

Fixed adder pricing is net F.O.B destination including all customs duties and charges, and delivery of fuel oil into Agency's storage tanks. The Contractor has included all applicable fees and taxes associated with the supply of the actual Fossil Fuel requirements in the Fixed Adder. This is the quoted figure provided by the vendor in their response to RFQ 18P 10102600000000000439. Any variation to this quote will result in termination of the award.

The vendor will extend same terms to other governmental units where available. Local government units will approach vendor separately to finalize terms by calling the vendor directly.

Any gallons above those used in the contract will revert to daily spot price.

The vendor will deliver to all known locations as contracted as the attached list indicates. These locations will be serviced on a "keep-filled" basis unless and until otherwise instructed at a later date. Confirmation of a change in the delivery schedule will be sent by Alan Henry.

The vendor will provide a contact person, phone number and email address to coordinate delivery requests and handle routine matters.

Invoicing

Agency Account numbers must be included on all invoices. Contractor shall provide the original invoice to the individual State of Maine department or locations as indicated on Attachment A to the billing address provided.

Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

Reporting

The Contractor must provide the Division of Purchases and the Energy Manager at the Bureau of General Services with a summary report of the total amount of gallons actually delivered made to all accounts within this region during the indicated time period. The report schedule is as follows:

Time Period Covered	Report Due
11/1/12 to 12/31/12	January 15, 2013
1/1/13 to 3/31/13	April 15, 2013
4/1/13 to 6/30/13	July 15, 2013
7/1/13 to 9/30/13	October 15, 2013

Failure to supply reports may result in termination of the contract. Please send the report to:

Division of Purchases
Terry Demerchant
111 Sewall Street
9 State House Station
Augusta, ME 04333
TERRY.L.DEMERCHANT@MAINE.GOV

Energy Manager
Alan Henry
111 Sewall Street
77 State House Station
Augusta, ME 04333
Alan.Henry@maine.gov

General Terms and Conditions

All terms and conditions set forth per Attachment B are applicable.

The Contractor and State of Maine agree to Net: 30 days. Prices are F.O.B. Destination.

Payment may be made by check or electronic funds transfer.

The Contractor stipulates that no collusion or other restraint of free competitive bidding, either directly or indirectly has occurred in connection with the award of this.

Attachments:

Attachment A: Fuel Oil Region List to this contract provides a list of the locations, address, city, tank size, anticipated need, fuel type, delivery restrictions, billing address and contact person for each location.

Attachment A: Fuel Oil Delivery Locations

18A	West Campus	111 Sewall St.	Cross Office Building CPL	Augusta	ME	04333	205000
14B	Riverview Psychiatric Center	250 Arsenal Drive		Augusta	ME	04333	110000
03B	Maine State Prison - Warren	807 Cushing Rd	Main 21	Warren	ME	04864	110000

Attachment B. GENERAL TERMS AND CONDITIONS OF PURCHASE ORDER

1. WARRANTY: Contractor warrants:

A. That all articles and services to be supplied by it under this agreement are fit and sufficient for the purpose intended and

B. That all articles and services covered by this contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and

C. That such articles are merchantable, good quality and free from defects whether patent or latent in material and workmanship, and

D. That all workmanship, materials and articles to be provided are of the best grade and quality, and

E. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within 1 year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

2. TAXES: Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state or local sales, or use the tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

3. PACKING & SHIPMENT: Deliveries shall be made as specified without charge for boxing, carting or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest transportation cost and to conform with the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. DELIVERY: Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, The Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

5. INSPECTION: All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. Division

of Purchases at its option may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.

6. INVOICE: The original and duplicate invoices covering each and every shipment made against this order showing purchase order number, vendor number and other essential particulars, must be forwarded promptly to the ordering agency concerned by the vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.

7. ALTERATIONS: The Division reserves the right to increase or decrease all or any portion of the work and the articles required to be provided by the bidding documents or this agreements, or to eliminate all or any portion of such work or articles or to change delivery date hereon without validating this agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this agreement because of the inability of the parties to agree on an adjustment or adjustments.

8. DEFAULT: The Division may terminate the whole or any part of this agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency.

In the event that the Division terminates this agreement in whole or in part pursuant to this paragraph, the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

9. COMPLIANCE WITH APPLICABLE LAWS: Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or sub-grantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

10. INTERPRETATION: This agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

11. DISPUTES: The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this agreement and the fulfillment of this agreement on the part of the contractor.

12. ASSIGNMENT: None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this

order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this agreement.

13. HOLD HARMLESS: The Contractor agrees to indemnify, defend and save harmless the Bureau of General Services, its divisions, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this agreement.

14. SOLICITATION: The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the contractor to solicit or secure this agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

15. WAIVER: The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such right, but the obligation of contractor with respect to such future performance shall continue in full force and effect.

16. All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current material safety data sheet for any hazardous chemical to their direct purchasers of that chemical.

17. By accepting this Purchase order, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly has occurred in connection with any contract awarded by the Division of Purchases.